Scamp Auto Rental 1, Inc., d/b/a Dollar Rent-A-Car *and* Teamsters Local Union No. 385, affiliated with International Brotherhood of Teamsters, AFL–CIO.[1] Cases 12–CA–15719 and 12–RC–7622

September 12, 1994

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On April 4, 1994, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a brief in opposition to the answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] as modified below and to adopt the recommended Order, as modified.

The judge sustained a portion of the Union's Objection 1—which alleges that the Respondent Employer offered ''pay raises to employees within the PDI [predelivery inspection] classification who would vote no''—based on his finding that during mass employee meetings just prior to the election Claire McChristy, the Respondent's director of employee relations, led the employees to believe that if they voted against the Union, they would receive the same raises as the Tampa employees had received following their recent rejection of union representation.

The Respondent's exceptions contend that this finding is outside the scope of Objection 1. We disagree. We find, as did the judge, that McChristy's promise to the assembled employees is closely related to the allegation of Objection 1. The promise of pay raises to all unit employees necessarily includes any promise made to the PDI-classified employees, who are included in the unit and also specifically mentioned in Objection 1.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Scamp Auto Rental, 1 Inc., d/b/a Dollar Rent-A-Car, Orlando, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. The attached notice is substitued for that of the administrative law judge.

IT IS FURTHER ORDERED that the representation election held on August 20, 1993, in Case 12–RC–7622 be set aside. Case 12–RC–7622 is severed and remanded to the Regional Director for Region 12 for further proceedings consistent with the following direction.

[Direction of Second Election omitted from pubication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

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[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge incorrectly stated that the July 7, 1993 conversation between Supervisor William Sanchez and employee Benita Perez, and their July 8, 1993 meeting with management pertaining to that conversation, occurred on June 7 and 8, respectively. These inadvertent errors do not affect our decision.

[3] No exception was filed to the judge's dismissal of allegations that the Respondent threatened employee Benita Perez with discharge in violation of Sec. 8(a)(1) of the Act.

In adopting the judge's conclusion that the Respondent interrogated Perez in violation of Sec. 8(a)(1), Chairman Gould finds it unnecessary to rely on the holding in *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985), and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

[4] The judge also found that an incident involving a promise of a promotion to leadman Juan Mendez constituted objectionable conduct within the scope of Objection 1. The Respondent excepts on the ground that the incident is beyond the scope of that objection. Whether the incident was sufficiently related to Objection 1, we do not rely on it in setting aside the election, because we note that the evidence shows merely that it occurred sometime in June and does not establish that it occurred during the critical period, i.e., after the petition was filed on June 7.

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT prohibit our employees from engaging in union solicitation on company property during nonworktime in nonwork areas or otherwise discriminatorily apply any no-solicitation or no-distribution rules.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

SCAMP AUTO RENTAL I, INC., D/B/A DOLLAR RENT-A-CAR

Dallas Manuel II, Esq., for the General Counsel.
William deMeza, Esq. and *Richard Danson Esq*., for the Respondent.
Joseph Egan Jr., Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Orlando, Florida, on February 7 and 8, 1994. The charge and amended charge was filed on July 27 and October 25, 1993,[1] and the complaint was issued on September 30, 1993. In substance, the complaint alleged:

1. That on or about July 8, 1993, the Respondent by Claire McChristy interrogated employees regarding their union membership and activities.

2. That on or about July 8, 1993, McChristy prohibited employees from engaging in union activities or soliciting for the Union during their nonworking time.

3. That on or about July 8, 1993, McChristy threatened employees with discharge if they violated the no-solicitation prohibition described in paragraph 2.

The petition in Case 12–RC–7622 was filed by the Union on June 7, 1993. Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 12, an election was held on August 20, 1993, in a unit consisting of all drivers, warehousemen, maintenance employees, plant clerical, and salespersons employed by the Employer at its Winter Park, Florida facility, but excluding guards and supervisors as defined in the Act. The outcome was that 54 employees voted for the Union and 63 voted against the Union. (There were seven challenged ballots, but these were not determinative to the outcome of the election.)

On August 27, 1993, the Union filed timely objections to the election alleging that the Employer engaged in conduct which should set the election aside. Thereafter, on December 1, 1993, the Regional Director issued an order directing that a hearing be held to ascertain whether the Employer's conduct was, if proven, sufficient to set aside the election. The allegations to be determined, to the extent not withdrawn at the hearing, were:

1. The alleged conduct which was described in the complaint.

2. An allegation that the Company offered pay raises to employees to vote ''no'' in the election.

3. An allegation that on or about August 10, 1993, the Employer caused the Orlando Police Department to remove employee Benita Perez from the employee parking lot where she had been distributing union leaflets.

4. An allegation that on or about August 17, 1993, Union Representatives Jose Navedo and employees Miguel Alicea and Freddy Espinal were told that they were under investigation because they engaged in handbilling at the employee parking lot.

At the hearing the Union withdrew its Objection 4.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is a car rental agency with a facility located at the Orlando, Florida airport. The Company concedes and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is conceded and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

It seems that this same Union had previously attempted, without success, to organize the Respondent's employees at its Orlando airport facility in 1992. It resumed its campaign in the spring of 1993 and filed the instant petition on June 7, 1993. At about the same time, the Union also filed a petition seeking to represent the Company's employees located in Tampa, Florida.

On June 1, 1993, Claire McChristy, the Company's director of human resources, arrived at the Orlando facility with three Spanish-speaking people who he was to use as his assistants in the forthcoming election campaign. McChristy thereafter split his time between the Orlando and Tampa facilities, planning strategy and dealing with labor relations questions. His three assistants (whom he described as consultants) were given free rein of the Company's facilities and were allowed to talk to employees on the premises at any time and any place.

On June 7, a group of employees was talking in the breakroom and was joined at one point by William Sanchez, a low-level supervisor. The breakroom is a place where employees congregate to eat or converse. It has vending machines and is sometimes used by the supervisors as well.

McChristy testified that a number of employees (unidentified) approached him on June 7 and told him that Sanchez and Benita Perez (a key union supporter) were having a conversation in the breakroom and were making union statements. McChristy states that when he heard about this, he began to be worried that Sanchez might say something unlawful to employees and that he therefore decided to have the two of them come to a meeting on the following morning. McChristy concedes, however, that he was not told by anyone the specific contents of the conversation and therefore had no objective basis for assuming that Sanchez had made any improper statements to employees.

[1] All dates are in 1993 unless otherwise indicated.

Benita Perez was scheduled to take her day off on June 8. Nevertheless at 8 a.m., she received a call from Supervisor Mike Poulsen who told her that she had to go to the office of Manager James Wiley who had something important to discuss with her. (At this point she assumed that she was going to be named employee of the month.) She arrived at about 9 a.m. and along with Sanchez, who also was invited to the meeting, waited around before being called in to meet with Wiley and McChristy.

The meeting which ensued was conducted by McChristy with Wiley taking notes. Although there is some variance between the versions given by the four people who testified about this meeting, I believe that the following is what took place. The first thing that happened was that McChristy, without explaining the purpose of the meeting, said that he had information that Perez and Sanchez had been discussing the Union in the breakroom, and asked if this was true. When Sanchez admitted that this was so, McChristy demanded to know what they had talked about. At this point, Benita Perez said that they really had not been talking about the Union, whereupon McChristy said that he was confused because the two were contradicting each other. After stating that he had to get this straightened out, McChristy pressed Sanchez in a cross-examination mode by asking, ''Willie, did you in fact get involved in some kind of conversation with Perez in the break room about union issues?'' At this juncture, Perez realized that she had not been called down to be given an award, and Sanchez also began to be scared. Sanchez said that he felt that there was a group out to get him fired and Perez stated that she knew (via union instructions) where and when she was entitled to talk to employees about the Union. McChristy told Perez that she could not talk about the Union to employees during her working hours or when she was transporting employees in the van. He told her that she could only talk about the Union with other employees during her breaks, during lunchtime, and off the property. (Perez' testimony on this point is buttressed, in my opinion, by the notes taken by Wiley which is G.C. Exh. 2.)

My sense is that this meeting was getting more and more intense and that Perez finally stated that she thought that she was going to be fired because of her union activity. At this point, McChristy stopped the meeting, called in another employee who could translate English and Spanish, and told Perez that she was not going to be fired and that she had a right to express her beliefs. Soon thereafter, Perez was allowed to leave the meeting.

McChristy testified that the purpose of the meeting was simply to find out whether Sanchez had violated instructions given to all supervisors not to talk to the employees about the Union. He states that his concern was based on the belief that the supervisors, not being trained in labor law, should not talk to employees because they might make the Company liable for their actions.

In my opinion, if this was McChristy's intent, it could easily have been done without Benita Perez being present. He simply could have called Sanchez into the office, asked if he was talking to employees about the union campaign, and reiterated his instructions to refrain from so doing. Instead, he called Perez in from her scheduled day off, made her wait for the meeting to begin, and grilled the two of them as to whether they had talked about the Union on the previous day. This was done without any knowledge of what they had said and without any inkling that Sanchez may have said anything improper. In fact, I don't believe McChristy's assertion as to why he held this meeting and I conclude that being aware that Benita Perez was a key union supporter, he compelled her attendance in order to interrogate and intimidate her using Sanchez as a shield to do so. Moreover, I believe that he told her that she should refrain from talking to employees about the Union except on her breaks and off the property.

Pursuant to the Board's view of the law, interrogation of employees will violate the Act if, considering the totality of the circumstances, it is deemed coercive. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *Raytheon Co.*, 279 NLRB 245 (1986). In this respect, the evidence shows that McChristy did not notify Perez as to any legitimate purpose for the meeting and his manner was, in my opinion, aggressive and intimidating. I therefore conclude that the Respondent violated Section 8(a)(1) in this respect.

I also conclude that McChristy's statements to Perez regarding the limits of her permitted solicitation activity was also violative of Section 8(a)(1) of the Act. In accordance with *Our Way, Inc*., 268 NLRB 394 (1983), a prohibition on solicitations in the workplace on ''work time'' would be presumptively legal whereas such a prohibition during ''work hours'' would be preemptively illegal. Further, even where a rule is presumptively valid, such a prohibition will violate the Act where it is directed only against union solicitations and applied in a discriminatory fashion. *Southwest Gas Corp*., 283 NLRB 543 (1987); *Marathon LeTourneau Co. v. NLRB*, 699 F.2d 248 (5th Cir. 1983); *Lawson Co*., 267 NLRB 463 (1983).

Based on the credited testimony of Benita Perez, I find that McChristy told her, notwithstanding the nonexistence of any prior written rules, that she could not talk about the Union to other employees except during lunch and break times. This limitation was, in my opinion, overly broad and would prohibit her from soliciting at times and places which would not interfere with her own work or the work of others. Nor is there any evidence that such a prohibition if applied to Perez would be necessary in relation to the Company's ability to deal with its customers. Finally, the evidence shows that the Company did not have any preexisting rule and permitted antiunion campaigning on its premises during working hours

The testimony of Perez did not, however, establish that McChristy actually threatened her with discharge although this is what she inferred. To this extent, the evidence does not support the allegation that the Respondent threatened employees with discharge.

III. THE OBJECTIONS

To the extent not withdrawn at the hearing, the Union's objections were as essentially as follows:

1. The union organizing committee was notified that Employer Representative Claire McChristy offered pay raises to employees within the PDI classification who would vote ''no.''

2. On or about August 10, 1993, the Employer had Orlando police officers escort employee Benita Perez, a union adherent, off common property owned by the Greater Or-

lando Aviation Authority where she was engaged in handbilling during the week preceding the election despite permission from GOAA to handbill there; and the Employer thereafter advised the bargaining unit employees what had been done in an attempt to intimidate the employees.

3. That on or about August 17, 1993, Union Representative Jose Navedo and employees Miguel Alicea and Freddy Espinal handbilled in the area approved by GOAA the employee parking lot. Subsequent to the handbilling, employees Alicea and Espinal were advised by the Employer that they were under investigation for their actions.

The Regional Director also ordered that the allegations set forth in the unfair labor practice complaint be considered in relation to the validity of the election even though not specifically raised by the Union in its Objections. *Framed Pictures Enterprise*, 303 NLRB 722 (1991).

I note at the outset that the Union presented no evidence to support Objection 3 and therefore that objection is overruled. I also note that I have already concluded that the Company, on July 8, 1993, 1 day after the petition was filed, coercively interrogated employee Benita Perez and unlawfully directed her to refrain from solicitation on behalf of the Union.

Objection 1

Juan Mendez, who was employed at the Company as a leadman at the time of the election, testified that in June 1993, he was asked to attend a meeting with Claire McChristy, James Wiley, and one of McChristy's consultants, Edward Avila. He states that at this meeting, he was asked to talk to his coworkers and try to convince them to vote against the Union. He states that he was promised a supervisory position if he did so.

Mendez testified that he carried out his part of the bargain but never received the promotion that he was promised; instead being laid off after the election on September 19, 1993.

McChristy denied the allegations made by Mendez. He asserts that on one occasion, Mendez approached him and Wiley about whether a supervisory job would soon be open and stated that he really supported the Company and that this should be given consideration in the Company's choice. According to McChristy, Wiley said that if the Company had an opening, it would be posted and that Mendez would be treated the same as any other applicant.

The Respondent did not call Wiley or Avila to rebut Mendez' claim. While this is understandable in the case of Avila who lives in California, it is noted that Wiley had already testified on other matters and was available. Moreover, I was more impressed by the demeanor of Mendez than that of McChristy. I therefore shall credit the testimony of Mendez and conclude that at some point in June 1993, he was offered a promotion to campaign against the Union. Although Mendez could not be certain as to when this meeting took place, it most probably occurred after June 7 when the petition was filed.

About 2 weeks before the election in Orlando, there was a similar election among the Company's employees at Tampa, Florida (on July 30, 1993). Almost immediately after the Union lost that election, the Company raised the hourly wage rate of its regular employees by 50 cents per hour and raised the wage rate of the leadpeople by $1 per hour. (The Tampa employees who received these raises were in the same categories as the employees in Orlando who were scheduled to vote on August 20, 1993.)

The credited testimony of employee Billy Joe Conner was that before the election, he was asked by consultants Oscar Carlos and Edward Avila to encourage people to vote ''no.'' Conner also testified that they asked him to ask McChristy at a meeting held on August 16 if the employees at Orlando would get the same raises as those given to the employees at Tampa.

According to Conner, just before the August 16 meeting, he was reminded by McChristy to ask the question which he did. In this respect, Conner testified that after being recognized from the floor, he said that he had heard that the Union was voted out at Tampa and that the employees there had gotten raises of 50 cents and $1. He states that he asked McChristy if the employees at Orlando would get the same raises if they voted against the Union. According to Conner, McChristy responded that there was a good possibility that the Orlando employees would get these raises.

Employee Isabel Burgos also testified about the August 1993 meeting. (Actually there were two meetings held on that date because the room was not big enough to accommodate all the employees.) She testified that one of the employees (she believed it was Conner) asked a question about the Tampa election and about raises being given to those employees after the election. According to Burgos, McChristy responded by saying that it was true that the Tampa employees had been given raises and that he implied that the same thing would happen with the Orlando employees if they voted against the Union.

Another employee Miguel Alicea testified that she recalled that Billy Conner asked whether the rumors were true that the Tampa employees had gotten raises after they voted against the Union. She states that McChristy responded by saying that although he couldn't promise anything, he could see no difference between the Company's employees in Tampa and those in Orlando.

McChristy denied that he or his assistants set up Conner to ask him a question at the August meeting.[2] He states that an employee asked about pay increases in Tampa and he told the group that the Tampa employees did in fact receive pay increases after the election. He testified that he told the employees that just because the employees in Tampa received raises this did not necessarily mean that it would also happen in Orlando. He states that he said ''that could be construed as a promise and I'm not going to do that.''

It probably is true that McChristy did not explicitly promise a wage increase to the Orlando employees if they voted against the Union. But it also seems to me, based on the credited testimony of employees Conner, Burgos, and Alicea that McChristy was being too clever by half. In my opinion, the intent of his response to the planted question was to give the employees good reason to believe that if they, like the Tampa employees voted against the Union, they too would receive the same raises.

In my opinion, the Union has proven by a preponderance of the evidence that employee Mendez was promised a su-

[2] McChristy testified that after hearing Conner's testimony he called Edward Avila in California and was told by Avila that he did not ask Conner to ask the question. On cross-examination, when asked by Egan how he could contact Avila, McChristy stated that he didn't think it was possible because of the earthquake.

pervisory position if he campaigned against the Union and that other employees, on August 16, 1993, were impliedly promised wage increases if they voted against the Union. As this conduct occurred after the petition was filed and as it is reasonably related the allegations of the Union's Objection 1, I shall sustain this objection.[3]

Objection 2

On Friday, August 13, 1993, at about 1:30 p.m., Benita Perez arrived at the employees' parking lot with her 17-year-old daughter and proceeded to offer leaflets to employees who either were coming off their shifts to go home, or arriving at the lot to go to work. This parking lot (which I assume is rented by the Company from the Airport) is used mainly by its employees and is located about a mile away from their work locations. It is not used by the public and to a lesser extent it is used by the Company to park its rental cars.

Perez, in addition to handing out these leaflets which were written in Spanish, also displayed a blown up version of the leaflet so that employees who did not take the leaflet would nevertheless be able to read its contents. As the shift change is at 3 p.m., the afternoon employees would generally arrive at the parking lot at about 2:40 p.m. The morning shift employees who finish at 3 p.m., would normally arrive at the parking lot at about 3:10 p.m. (The Company operates a shuttle service to transport employees to and from the parking lot.)

According to Perez, who had on a Teamsters T-shirt, she stationed herself at the guard shack and encountered no problems until after the new guard came on duty at about 2 or 2:30 p.m. She states that the new guard asked her what she was doing there and said that she could not remain because this was company property. Perez told the guard that she was an off-duty employee and believed that she had a right to be there. According to Perez, after the guard made a phone call, Susan Jacome arrived in a car, pointed a camera at her, and asked Perez to open the blown up version of the leaflet that she was carrying. Perez testified that Supervisor Tom Fitzgerald arrived in another car and told her that she would have to go off the property. At this point, according to Perez, employees began to arrive to pick up their cars and Fitzgerald told her to wait at Cargo Road while he called the airport's security people. Perez states that a few minutes later, one of the employees (named Maggie) started yelling that her license plate had been stolen and about 5 minutes later a group of police officers and GOAA people arrived in their cars. Perez states that one of the guards accompanied by a policeman told her that she could not remain on the property and that Maggie was complaining that someone had stolen her license plate. Given these circumstances, Perez decided to leave and she never again attempted to hand out leaflets at the parking lot. Although there were different estimates as to the number police cars that showed up at the scene, the low estimate given by the Company's witness was that there were three police cars and one GOAA car.

The only witness called by the Employer regarding this incident was Susan Jacome who, among other things, acts as a liaison between the Company and its security guard service. She testified that at about 2:50 p.m., she received a phone call from James Wiley who told her that there were employees congregating at the employees' parking lot and he suggested that she take a camera to the guard shack. Jacome went to the shack where she saw Benita Perez and employee Isabel Burgos with a sign that was written in Spanish. She states that she gave the camera to the guard without attempting to take any pictures and that Tom Fitzgerald drove up within 3 minutes of her arrival. Jacome testified that Fitzgerald, on his arrival, called the Orlando Police Department, whereupon three police cars and a GOAA vehicle arrived at the scene. She asserts that when the police were told by the GOAA people that the employees did not have permission to picket, the police asked the employees to leave the area.

Initially, I wondered if the police presence at the parking lot was prompted by the fact that an employee asserted that her license plate had been stolen. However, the testimony of Jacome was that this did not happen until after Fitzgerald called the police department and it therefore played no role in the appearance of the police at the scene.

The Respondent essentially disclaims any responsibility for the actions of the police, claiming that ''there was no evidence that the company called the police, much less a large force of police, to embarrass or coerce or threaten the employees or the Union.'' The Respondent's brief goes on to state: ''It is impossible to discern why several OPD cars and a GOAA car responded to the Company's single telephone request for information; perhaps the answer lies in the fact that, since the OPD Airport contingent is a small one, 'they seem to get involved in anything, just because nothing ever happens.'''

While I appreciate the imaginative argument made by Respondent's counsel, I cannot agree with his conclusion. Perez stationed herself at the entrance to the parking lot with a sign and leaflets for distribution during the shift change period. There was no evidence and no assertion by the Company that Perez was doing anything improper or that her activities were in any way impeding employees. Nor was Jacome told by Wiley that there was any vandalism going on when he told her that employees were congregating at the parking lot and instructed her to go to the lot with her camera. I credit the testimony of Perez to the effect that Jacome and Fitzgerald told her to leave the property. As the evidence shows that Fitzgerald called the police after telling Perez to get off the property, I don't need a smoking gun to infer that the police arrived at his request in order to have Perez removed from the parking lot area. Having put in motion the chain of events, the Company cannot now claim that it was not responsible for the fact that a relatively large contingent of police and airport security vehicles arrived at the parking lot like some cavalry charge in an old western movie.

In *Nashville Plastics Products*, 313 NLRB 462 (1983), the Board held that an employer violated Section 8(a)(1) of the Act by prohibiting off-duty employees from engaging in union solicitation and distribution of union literature on company property during nonworktime in nonwork areas. The Board stated:

[3] Even if these facts were construed as falling outside the specific allegations of the Union's Objection 1, they were fully litigated and can be used as the basis for setting the election aside. See *White Plains Lincoln Mercury*, 288 NLRB 1133, 1138–1139 (1988).

Furthermore, an off-duty employee seeking access to his employer's property to distribute union handbills, unlike a non employee union organizer, falls within the scope of Supreme Court decisions protecting workplace organizing activities. Thus in *Beth Israel Hospital v. NLRB* 437 U.S. 483, 491 (1978), the Court stated that ''the right of employees to self-organize and bargain collectively established by Section 7 . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite.'' And in *Eastex, Inc. v. NLRB*, 437 U.S. 556, 574 (1978), the Court upheld the Board's view that the workplace ''is a particularly appropriate place for the distribution of Section 7 material, because it 'is the one place where [employees] clearly share common interests and where they traditionally seek to persuade fellow workers in matters affecting their union organizational life.''' [Quoting *Gale Products*, 142 NLRB 1246, 1249 (1963).]

In sum, if analogies are to be drawn, we find that the off-duty employees in this case who sought access to the Respondent's premises for organizational purposes on days when they were not scheduled to work most closely resemble the employees in the *LeTourneau* case, whose right to distribute union literature on the outside areas of the employer's premises on their own time was upheld by the Supreme Court.[4]

Given my findings of fact regarding this incident and applying the law as set out in *Nashville Plastics*, supra, I conclude that the Union's Objection 2 should be sustained.

CONCLUSIONS OF LAW

1. By interrogating an employee about her union activities, the Respondent has violated Section 8(a)(1) of the Act.

2. By prohibiting an employee from soliciting except at her breaktimes or lunchtimes, the Respondent has violated Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Union's Objections 1 and 2 are sustained.

5. The conduct found to be objectionable, together with the unfair labor practices found above, is sufficiently serious to set aside the election and to hold a new one.[5]

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Scamp Auto Rental I, Inc., d/b/a Dollar Rent-A-Car, Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership or activities.

(b) Prohibiting employees from engaging in union solicitation on company property during nonworktime in nonwork areas, or discriminatorily applying any no-solicitation or no-distribution rules.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Orlando, Florida, copies of the attached notice marked Appendix.[7] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees, are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 12–RC–7622 be remanded to the Regional Director and that the election held on August 20, 1993 be set aside and that a new election be scheduled.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

[4] *NLRB v. LeTourneau Co. of Georgia*, 324 U.S. 793 (1945).

[5] See *Playskool Mfg. Co.*, 140 NLRB 1417, 1419; *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786–1787 (1962).

[6] If no exceptions are filed as provided by Sec. 102.46 and Sec. 102.69(e) of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT prohibit our employees from engaging in union solicitation on company property during nonworktime in nonwork areas or otherwise discriminatorily apply any no-solicitation or no-distribution rules.

WE WILL NOT in any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

SCAMP AUTO RENTAL I, INC., D/B/A DOLLAR RENT-A-CAR